

**Resolution on Pension and Retirement Medical  
by James Marc Leas for the year 2005 IBM annual meeting**

Stockholders ask the Board to adopt the following policy:

Age discrimination in retirement policies will be ended by allowing all employees, regardless of age, to choose the promised pension and retirement medical insurance under the terms in effect before IBM adopted changes in 1995 and 1999.

On July 31, 2003, a Federal District Court in Illinois ruled that the cash balance pension plan IBM adopted in 1999 and an earlier plan IBM adopted in 1995 both violated federal retirement law because they discriminated on the basis of age.

The *Wall Street Journal* reported the next day that “potentially, IBM could have to recalculate benefits for 130,000 employees and retirees, paying most of them more.” However, the *Journal* also reported that “the impact” of the decision “to IBM’s near-term operating cash flow would be negligible, because [IBM] would pay the benefits from its well-funded pension plan. Indeed, the company filings say an adverse ruling would be immaterial.”

Countering Bush Administration plans to overturn this federal court ruling, on September 9, 2003, Congress overwhelmingly passed an amendment introduced by Congressman Bernie Sanders to prevent federal funds from being so used. Congress passed a similar resolution in 2004.

The changes IBM implemented in 1999 created an unprecedented groundswell of dissent among IBM employees. Covered by national media, employee meetings around the country led to a Senate hearing chaired by Senator James Jeffords, stockholder resolutions, union organizing, the class action law suit that employees won, and then the vote in the US Congress.

Employees expressed outrage that IBM broke its promise that retirement pay and retirement medical insurance would be a secure part of earned compensation.

The protest campaign led IBM to partially back down, allowing about 35,000 additional employees to choose between the pension plans.

Confirming employee calculations, the court said that the cash balance plan would “cause reductions in retirement pay of up to 47% for older workers.”

Having considered the fully developed arguments on both sides, the federal district court declared that IBM’s “1999 cash balance formula violates the literal terms of the Employee Retirement Income Security Act. IBM’s own age discrimination analysis illustrates the problem.”

From IBM’s own documents the court also concluded that “IBM proceeded with the cash balance plan with open eyes and was fully informed of the consequences of the litigation that was sure to come.”

IBM boosted the profit report as a result of its 1995 and 1999 changes--even though no money was transferred into the company--based on an accounting rule treatment of the pension plan. The court said, "astonishingly, plan income was over \$1 billion in 2001, and this accounted for 13% of IBM's net income." IBM executive pay is tied to the report of profit as elevated by the pension income. In addition, the August 1, 2003 *New York Times* noted that some of the savings to the pension plan "was to be used to create pensions for executives." IBM enacted a separate "top hat" pension plan for executives in 1998.